

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 4, 2020

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Earl Lott, Deputy Director
Office of Water

Docket No.: 2019-1609-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 35, Emergency and Temporary Orders and Permits; Temporary
Suspension or Amendment of Permit Conditions
Chapter 291, Utility Regulations
HB 3542 and SB 700: Regulation of Utilities
Rule Project No. 2020-011-291-OW

Background and reason(s) for the rulemaking:

This rulemaking is proposed to implement House Bill (HB) 3542 and Senate Bill (SB) 700, 86th Texas Legislature, 2019. HB 3542, authored by Representative Dade Phelan, adds additional criteria to allow the Texas Commission on Environmental Quality (TCEQ or commission) to appoint a person to temporarily manage a utility. SB 700, authored by Senators Kirk Watson and Robert Nichols, authorizes the TCEQ to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ can issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary, to ensure safe drinking water or environmental protection. TCEQ may request the Public Utility Commission of Texas (PUC) to consider establishing reasonable compensation on an expedited basis to allow the retail public utility receiving the service to make a temporary adjustment to its rate structure. Notice of a hearing under Texas Water Code (TWC), §5.504 to affirm, modify, or set aside an emergency order issued without a hearing pursuant to TWC, §13.041(h) is adequate if the notice is mailed or hand delivered to the last known address of the retail public utility's headquarters. The legislation amends TWC, Chapter 5 to allow TCEQ commissioners by order or rule to delegate to the executive director of the TCEQ the authority to receive applications, issue emergency orders under TWC, §13.041(h), and authorize in writing a representative or representatives to act on the executive director's behalf.

SB 700 also fixes an error from the 85th Texas Legislature (2017) to require an application filed under TWC, §13.258(a) to be submitted to the PUC and not the TCEQ.

This rulemaking amends TCEQ rules relating to the economic regulation of water and sewer utilities as directed by the legislature.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The proposed rulemaking would add a new section to 30 TAC Chapter 35 and amend sections in 30 TAC Chapter 291 to reflect changes to TWC, Chapters 5 and 13.

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B.) Scope required by federal regulations or state statutes:

The rulemaking would implement HB 3542 and SB 700. No federal statute or rule directly applies.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

The rulemaking would be proposed under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction.

Effect on the:

A.) Regulated community:
HB 3542

Beginning September 1, 2019, a temporary manager can be appointed to a utility that provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to:

- provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;
- provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or
- maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

SB 700

Beginning September 1, 2019, the TCEQ will be able to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ will be able to issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary, to ensure safe drinking water or environmental protection.

B.) Public:
HB 3542

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The public may be impacted by an increase in the water and/or sewer service rates to fund any required system upgrades, temporary manager fees, or receiver fees; however, those costs are unknown.

SB 700

Customers of troubled systems in which an emergency order has been issued may see an improvement in water and/or sewer service.

C.) Agency programs:

HB 3542

The Water Supply Division (WSD) will be required to amend rules to implement the changes made by HB 3542. This new requirement may increase the number of water and sewer utilities that qualify for appointment of a temporary manager. The duties and responsibilities associated with implementing the new criteria can be accomplished by utilizing existing resources in the WSD, Office of Compliance and Enforcement, and the Office of Legal Services.

SB 700

The WSD will be required to amend rules to implement the changes made by SB 700.

Stakeholder meetings:

There were no stakeholder meetings held.

Potential controversial concerns and legislative interest:

There are no anticipated controversial concerns. Representative Drew Springer has shown interest in HB 3542.

Would this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Without approval, Chapters 35 and 291 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: September 25, 2020

Anticipated *Texas Register* publication date: October 16, 2020

Anticipated public hearing date: November 10, 2020

Anticipated public comment period: October 16, 2020 – November 17, 2020

Anticipated adoption date: February 2021

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Attachments:

HB 3542
SB 700

cc: Chief Clerk, 2 copies
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